

TAB C

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ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOUGLAS JENDRAS,

Plaintiff,

-against-

CASE NO. 11
Civ. 5409 (KMK)

ABOVENET, INC.,

Defendant.
-----X

One North Broadway
White Plains, New York
April 2, 2012
10:15 a.m.

DEPOSITION OF WILLIAM LAPERCH, a Witness
on Behalf of the Defendant in the above-captioned
matter, held pursuant to Notice at the above
time and place, before a Notary Public of the
State of New York.

Donna Bochnik,
Shorthand Reporter

1 *William LaPerch*

:00:58 2 Q. And was it you that rejected it?

:01:01 3 A. Yes.

:01:01 4 Q. And what was the reason you rejected
:01:04 5 it?

:01:04 6 A. Doug no longer worked for me.

:01:06 7 Q. No longer worked for you, meaning you
:01:09 8 were no longer his supervisor; is that correct?

:01:12 9 A. Right, yes.

:01:13 10 Q. And at what point in your view was he
:01:16 11 no longer a direct report to you?

:01:19 12 A. When I made Rajiv the COO.

:01:25 13 Q. And before Mr. Datta was made the COO,
:01:25 14 there was no COO; is that correct?

:01:27 15 A. Yes.

:01:27 16 Q. So, a number of people, who had been
:01:29 17 your direct reports, were now reporting to Mr. Datta
:01:32 18 once he was the COO; is that correct?

:01:35 19 A. Correct.

:01:36 20 Q. Did you have any direct reports at that
:01:39 21 point once Mr. Datta became the COO?

:01:42 22 A. Yes.

:01:42 23 Q. Was it less than the number of direct
:01:44 24 reports you had previously?

:01:45 25 A. Yes.

William LaPerch

Q. What were the number of direct reports you had after Mr. Datta became the C00?

A. I had Mr. Datta reporting to me. I had Mr. Ciavarella, who is our CFO. I had Mr. Sokota, general counsel. And I had Mr. Alba, who ran a small unit for us down in Virginia.

Q. And that was it?

A. And I also had my assistant, Gina.

Q. So, in addition to Mr. Jendras, I gather, then, Mr. Jacquay was no longer reporting directly to you; is that correct?

A. I'm sorry; Mr. Jacquay, as well.

Q. He was reporting to you?

A. He was reporting to Rajiv, yes.

Q. So, Mr. Jendras and Mr. Jacquay were no longer your direct reports; correct?

A. Correct.

Q. And other than Mr. Jendras and Mr. Jacquay, were there any other individuals, who had previously been direct reports to you, who were now reporting to Mr. Datta once he became the C00?

A. Yes.

Q. Who would that have been?

A. Mr. Donaldson.

William LaPerch

:21:07 2 A. Of 2011.

:21:08 3 Q. And was it after you learned of that,
:21:11 4 that you approached Mr. Jendras and asked him
:21:13 5 whether he wished to voluntarily leave the company?

:21:17 6 A. I don't remember whether it was before
:21:18 7 or after.

:21:19 8 Q. But you do remember a conversation,
:21:22 9 where you made an inquiry whether Mr. Jendras
:21:24 10 intended to quit; is that correct?

:21:26 11 A. The context of the conversation I
:21:31 12 remember is that I knew he would be disappointed
:21:33 13 when he was not given the COO role and wanted to
:21:36 14 make sure -- wanted to get an idea of what his
:21:39 15 thinking was, working for Rajiv.

:21:42 16 Q. And your recollection is you had this
:21:44 17 conversation with him a short time after Mr. Datta
:21:49 18 was appointed COO?

:21:51 19 A. It may have been before; I'm not sure.
:21:54 20 You know, I made my decision towards the end of the
:21:58 21 year. And we had to get it, you know, approved by
:22:01 22 the board and everything like that. So, I'm not
:22:02 23 sure whether it was before or after. But once my
:22:04 24 decision was made, I had a conversation with Doug.

:22:08 25 Q. And your best recollection, it was

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William LaPerch

:22:09

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either shortly before Mr. Datta was appointed or

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sometime after Mr. Datta was appointed?

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A. Sometime around there, yeah.

:22:17

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Q. And that would've been, to the best of

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your knowledge, either towards the end of 2010 or

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the early part of 2011; is that correct?

:22:24

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A. Somewhere around there, yeah.

:22:25

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Q. And where did this conversation take

:22:26

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place?

:22:27

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A. Don't remember. My office, probably.

:22:31

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Q. Was there anyone else present when you

:22:31

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had this conversation with Mr. Jendras?

:22:34

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A. Not to my recollection.

:22:35

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Q. And the purpose of your having this

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conversation was to see if Mr. Jendras was willing

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to stay on after the appointment of Mr. Datta?

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A. Yes.

:22:44

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Q. And was it your desire that he stay on

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at that point?

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A. Yes.

:22:49

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Q. And did you express that sentiment to

:22:55

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Mr. Jendras?

:22:56

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A. Yes.

:22:56

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Q. And what did Mr. Jendras say in

William LaPerch

he didn't have a fully executed Stock Award Agreement?

A. No.

Q. Do you know if anybody else gave such an instruction to Mr. Datta?

A. I don't know.

Q. Did Mr. Datta keep you apprised of the status of his discussions with Mr. Jendras regarding the terms of a voluntary separation?

A. We discussed it once or twice.

Q. And did he share with you the fact that it was Mr. Jendras' view that he was entitled to accelerated vesting of any unvested stock units if he elected to voluntarily separate from the company?

A. Yes.

Q. And were you aware of that position before you gave the instruction to Mr. Sokota to alter the terms of the January 25th, 2011, Stock Award Agreement?

MR. PEIKES: Objection to the form.

A. I don't recall the timing of all that.

Q. Now, I want to redirect your attention to the 2010 review for Mr. Jendras.

Do you recall whether Mr. Jendras

William LaPerch

took exception to the characterization in the review that he was considered difficult to approach by some salespeople?

A. He did.

Q. And did he share that point of view with you?

A. Yes.

Q. And did he indicate to you that he thought it was inaccurate?

A. Yes.

Q. And how did he share that with you?

A. By saying, "It's inaccurate."

Q. And do you recall whether he shared this with you in person or by telephone?

A. Well, when I gave him that input during our March 7th appraisal session, he told me that he thought that was inaccurate and that he had a good relationship with all his salespeople.

Q. And what, if anything, did you do or say in response to that?

A. I told him that I disagreed and that -- you know, I indicated that as I -- as I had written in his appraisal, some of it might be perception rather than reality, but it's something that he

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William LaPerch

:54:09

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described took place in the context of his review for 2010; is that correct?

:54:15

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:54:17

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A. We had limited interaction once the

:54:19

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change to the -- to Rajiv's role as COO was put in

:54:23

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place. And that was, you know, mostly the review

:54:27

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session we had on March 7th.

:54:29

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Q. And Mr. Jendras never gave notice to

:54:32

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you, or for that matter anyone else, that he was

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leaving the company; is that correct?

:54:36

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A. That's correct.

:54:37

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Q. Now, at some point in time there was

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a decision made to terminate Mr. Jendras; correct?

:54:46

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A. Correct.

:54:46

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Q. And do you know when that decision was

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made?

:54:50

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A. I don't know the exact date, no.

:54:52

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Q. Did you make that decision?

:54:54

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A. I was conferred and it was not my

:54:57

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decision to make; it was Rajiv's decision to make.

:55:00

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Q. Who made the decision?

:55:02

22

A. Rajiv.

:55:02

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Q. And when did he make it?

:55:04

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A. Don't know the date.

:55:05

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Q. Did he make it shortly before

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William LaPerch

:55:08

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Mr. Jendras was advised that he was terminated?

:55:13

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A. The -- as some of the documents we

:55:20

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read today, you know, there was ongoing concern

:55:23

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from Rajiv about Doug's willingness to fit in and

:55:26

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to be a productive part of Rajiv's new organization.

:55:30

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When you review that documentation, I think Rajiv

:55:33

8

lays out, pretty fairly, his views on the subject

:55:37

9

and things he would try and things he would expect.

:55:42

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And so, it was -- you know, it was an ongoing

:55:44

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discussion until it got to the point where Rajiv

:55:46

12

said, this isn't working. It's my decision that --

:55:48

13

you know, that Doug is not performing his duties

:55:53

14

as required. He's not showing up for work. And

:55:56

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I'd like to terminate him.

:55:57

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Q. When did he communicate that to you?

:55:59

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A. I don't know.

:56:02

18

Q. Do you know whether it was, for

:56:03

19

example, in March of 2011?

:56:05

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A. It wasn't in March.

:56:06

21

Q. Was it in April of 2011?

:56:09

22

A. Not sure. No, it wasn't in April,

:56:11

23

either.

:56:11

24

Q. Was it in May of 2011?

:56:13

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A. It could've been May; it could've been

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William LaPerch

:56:13

2

June.

:56:16

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Q. So, it was before you sent the emails

:56:17

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to Mr. Jendras, inquiring about various outages?

:56:20

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A. I don't recall all the dates on those

:56:22

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outages.

:56:22

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Q. Do you want to look at them again?

:56:24

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Would that help you?

:56:30

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MR. PEIKES: My notes show between May

:56:32

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19th and June 17th, are the emails

:56:35

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that you looked at.

:56:37

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MR. WEINSTEIN: I believe that's right.

:56:39

13

A. Okay. So...?

:56:41

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Q. Had the decision by Mr. Datta been made

:56:44

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to terminate Mr. Jendras before you made any of

:56:46

16

those inquiries with Mr. Jendras, memorializing

:56:49

17

these emails I had marked and asked you about?

:56:55

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THE WITNESS: Could you read back the

:56:55

19

question.

:56:56

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(Question read)

:57:10

21

A. I can't be exactly sure of the date,

:57:11

22

but it is my best recollection that at that point

:57:15

23

that decision probably had not been made. We

:57:18

24

were -- There was still ongoing efforts to see if

:57:21

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things could be worked out.

1 *William LaPerch*

:57:22 2 Q. So, your best recollection is sometime
:57:26 3 after -- I'll show you what had been marked as
:57:32 4 Exhibit 49 -- after June 17th; is that correct?

:57:36 5 A. I don't know.

:57:37 6 Q. That would have been after the last
:57:40 7 date that I have in this chain of emails, where you
:57:42 8 made inquiry with Mr. Jendras regarding certain
:57:45 9 outages; correct?

:57:47 10 A. That is the last date, yes.

:57:49 11 Q. You don't know whether the decision was
:57:51 12 made before June 17th or not; is that correct?

:57:51 13 A. I don't.

:57:56 14 Q. Would you have continued to reach out
:57:59 15 to Mr. Jendras on operations issues after Mr. Datta
:58:06 16 told you that it was his intent to terminate him?

:58:08 17 A. The nature of all those questions and
:58:10 18 emails that we reviewed are very case-specific.
:58:13 19 They require, you know, a couple of lines of
:58:16 20 response, with the exception of the pole attachment
:58:19 21 issue. They're just sort of ordinary emails I would
:58:22 22 send out to make sure that the customers are okay
:58:24 23 and
:58:24 24 the network's working. So, I sent it to the title,
:58:28 25 not the person.

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William LaPerch

:58:29

2

Q. You say you sent it to the title. You

:58:32

3

did address it to Mr. Jendras; did you not?

:58:34

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A. Right.

:58:34

5

Q. And with regard to Mr. Datta's

:58:37

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communication to you regarding his decision, did he

:58:41

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give you a specific reason why he had concluded that

:58:45

8

he wished to terminate Mr. Jendras?

:58:48

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A. Yes. Because Mr. Jendras wasn't

:58:50

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adhering to the agreement they had for showing up

:58:53

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for work on days that Mr. Datta was in the office.

:58:57

12

Q. And so, I gather from your testimony

:58:59

13

your understanding was, the basis for the

:59:06

14

termination was that he was violating the

:59:09

15

telecommuting agreement; is that correct?

:59:10

16

A. He was violating the agreement that he

:59:11

17

had with his supervisor on being in White Plains and

:59:14

18

showing up for work.

:59:15

19

Q. And do you know, in connection with

:59:17

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that conclusion that Mr. Datta reached, whether he

:59:20

21

had ever indicated to Mr. Jendras at any point

:59:26

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before he terminated him, that in his view, there

:59:29

23

was noncompliance with the terms of the

:59:33

24

telecommuting agreement?

:59:34

25

A. Mr. Datta, in discussions, indicated

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William LaPerch

:5 /

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that there was written correspondence that outlined

:59:40

3

what the agreement would be, and he had spoken to

:59:44

4

him once by phone to acknowledge that he wasn't in

:59:49

5

compliance with this.

:59:50

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Q. He told you that there was a particular

:59:52

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phone conversation that took place after the

:59:55

8

telecommuting agreement had been reached, in which

:59:57

9

he advised Mr. Jendras that he was not in

:00:00

10

compliance; is that correct?

:00:01

11

A. He told me that there was a particular

:00:03

12

time where he notified Mr. Jendras that he was not

:00:05

13

in compliance. I'm not 100 percent sure if it was

:00:10

14

telephonically, email, or how it was done.

:00:12

15

Q. Did he tell you when he gave that

:00:14

16

notification?

:00:14

17

A. No.

:00:17

18

Q. And you're not sure in what fashion he

:00:19

19

gave that communication?

:00:21

20

A. I'm not.

:00:21

21

Q. Did you ever advise Mr. Jendras that

:00:27

22

it was your view he was not in compliance with the

:00:31

23

telecommuting agreement?

:00:32

24

A. I didn't have a telecommuting agreement

:00:34

25

with him.